

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

00cr977 (JGK)

KEVIN ALLER,

ORDER

Defendant.

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JOHN G. KOELTL, District Judge:

The Court has received the attached letter from the defendant. The Government should respond by June 19, 2020. The defendant may reply to the Government's responses to the defendant's motion for compassionate release by June 29, 2020. It is not helpful for the defendant to file additional filings outside the schedule determined by the Court because it simply delays the disposition of the numerous filings that the petitioner has already made. Chambers will mail a copy of this order to the defendant.

SO ORDERED.

Dated: New York, New York  
June 10, 2020

\_\_\_\_\_/s/ John G. Koeltl\_\_\_\_\_  
John G. Koeltl  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW YORK

Kevin Alier,  
Petitioner/Defendant

CASE NO.  
00 CR 977 (TGL)

V.  
United States of America,  
Respondent/Plaintiff

EMERGENCY MOTION For order  
Reducing Sentence under 18  
U.S.C. 3582.

KEVIN ALIER, RESPECTFULLY MOVES THIS COURT TO GRANT COMPASSIONATE RELEASE UNDER 18 U.S.C. 3582 (C)(1)(A) BASED ON THE "EXTRAORDINARY AND COMPELLING REASONS" PRESENTED BY THE COVID-19 PANDEMIC. THIS COURT SHOULD GRANT RELIEF BASED ON MR ALIER'S CHRONIC MEDICAL CONDITIONS, PLUS SERVING A LARGE PORTION OF HIS SENTENCE, AND THE GRAVE SITUATION WITHIN "THE FEDERAL CORRECTIONAL INSTITUTION WITH NUMEROUS CONFIRMED COVID-19 CASES AFFECTING STAFF AND INMATES. MR ALIER REQUEST AN ORDER REDUCING THE PLAINTIFF'S SENTENCE TO TIME SERVED, AND IMPOSING AN ADDITIONAL PERIOD OF SUPERVISED RELEASE WITH A CONDITION OF HOME CONFINEMENT.

Compassionate Release Before the First Step Act

THE COMPASSIONATE RELEASE STATUTE EMPOWERS COURTS TO REDUCE A DEFENDANT'S SENTENCE UNDER CERTAIN CIRCUMSTANCES

Where "extraordinary and compelling reasons warrant such a reduction" 18 U.S.C. 3582(c)(1)(A)(i). The statute was first enacted as part of the Comprehensive Crime Control Act of 1984 to serve as a "safety valve" to enable judges to reassess whether a sentence reduction was warranted by factors previously addressed through the abolished parole system. The Sentencing Commission defined "extraordinary and compelling reasons" as including medical conditions, age, family circumstances, and other reasons. 18 U.S.C. 3582(c)(1)(A). As originally enacted, the statute left some discretion for filing compassionate release motions with the Director's of the Bureau of Prisons ("BOP").

Compassionate Release After First Step Act  
On December 21, 2018, the president signed the First Step Act into law, significantly changing 3582, most significantly by allowing defendants to directly petition courts for relief instead of leaving relief decisions solely with the BOP. 18 U.S.C. 3582(c)(1)(A)(i). The Compassionate Release Statute, as amended by the First Step Act, authorizes district courts once certain conditions are met, to grant a sentencing reduction under 18 U.S.C. 3582(c)(1)(A)(i). Where "extraordinary and compelling reasons warrant such a reduction" and a reduction would be consistent with applicable policy statements issued by the Sentencing Commission. The applicable policy statements explain "extraordinary and compelling reasons exist" where, among other things, a defendant is "suffering" from a serious physical or medical condition. - That



that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover." See U.S.S.G. 1B1.13 cmt. n. (a) 760. Sentencing Commission's Policy Statement also directs that "the defendant is not a danger to the safety of any other persons or to the community, as provided in 18 U.S.C. 3142 (g)," and must consider "the factors set forth in 18 U.S.C. 3553 (a) to the extent applicable." See U.S.S.G. 1B1.12.

over 30 days have passed since the Petitioner's Request for Compassionate Release, so this Court has Jurisdiction.

The petitioner Request Compassionate Release on March 23, 2020, while he was incarcerated at FCI Estill, then on April 12, two F-4 tornado's hit the institution destroying it. The petitioner was transferred to FCI Lewisburg, where he again asked for Compassionate Release. Where 30 days have passed Under 18 U.S.C. 3582 (C)(1)(A)(i), a defendant ordinarily must wait 30 days after submitting a Request for Compassionate Release. 30 days have passed. This Court has Jurisdiction.

This Court should grant the petitioner's Compassionate Release so Covid-19 Does not Render His Remaining Imprisonment Term a Death Sentence.

The present motion for Compassionate Release is based on conditions that have radically changed in the nine years since the underlying convictions. The petitioner meet the criteria for release for several reasons. (1) he suffers chronic medical conditions placing him at high risk for Covid-19 infections, coupled with his incarceration in the B.O.P. which is experiencing a serious Covid-19 outbreak; and he has served several years on his term of imprisonment, and he poses a minimal risk, if any to the public. Which can be managed through home confinement, and supervision, and oversight by his parole officer. See 3553. (A) Factor.

The petitioner's high risk of Covid-19 infection due to medical risk and Covid-19 through-out B.O.P. presents, extraordinary and compelling reasons.

On March 11, 2020, the World Health Organization ("WHO") officially classified the spread of Covid-19, the disease caused by the novel coronavirus, as a pandemic. On March 13, 2020, the President declared a national emergency due to the evolving threat of the coronavirus (Covid-19).



outbreak. To slow the spread of the disease, the Center for Disease Control and Prevention ("CDC") has broadly advised people to take basic preventive actions - such as avoiding crowds, staying six feet away from others, keeping surfaces disinfected, and frequently washing their hands or using hand sanitizer. These precautions are impossible for incarcerated individuals. As such, public health experts warn that incarcerated individuals "are special risk of infection" and are less able to participate in preventive measures to keep themselves safe.

The petitioner's medical records, to this motion reflect a multitude of health problems. He suffers from Asthma, high blood pressure, respiratory problems and obesity, and is at risk of inmate; in addition, see

"Achieving a Fair and Effective Covid-19 Response: An open letter to Vice President Mike Pence, and other Federal, State and Local Leaders from public Health and Legal Experts in the United States" (March 2, 2020).

Contributing to the rapid spread of Covid-19 are circumstances inmate to prison life. Inmates must share communal living spaces and bathrooms. Hand sanitizer, an effective disinfectant recommended by (CDC) to reduce transmission, is deemed forbidden" [Continued]

The petitioner's medical condition put him

AT SIGNIFICANT RISK FOR EVEN MORE SEVERE AND LIFE THREATENING ILLNESS SHOULD HE BE EXPOSED TO COVID-19 WHILE INCARCERATED. THE OUTBREAK OF COVID-19 FOR THE BOP IS LIKELY TO HAVE FATAL CONSEQUENCES FOR HIM. BASED ON THESE FACTS THE PETITIONER ASK THIS COURT TO FIND HIS HEALTH CONDITIONS AND PLACEMENT SUFFICIENT TO SATISFY THE CRITERIA FOR A REDUCTION OF SENTENCE.

### RELEVANT 3553 (A) SENTENCING FACTORS WARRANT COMPASSIONATE RELEASE.

UNDER THE COMPASSIONATE RELEASE STATUTE, WHEN A DEFENDANT ESTABLISHES THE EXISTENCE OF EXTRAORDINARY AND COMPELLING CIRCUMSTANCES JUSTIFYING RELIEF, COURT MUST CONSIDER THE RELEVANT SENTENCING FACTORS OF 18 USC 3553(A) TO DETERMINE WHETHER A SENTENCING REDUCTION OR MODIFICATION IS WARRANTED. 18 USC 3582 (C)(1)(A)(i). THIS COURT'S COMPASSIONATE RELEASE ANALYSIS IS NOT LIMITED TO THE PERSPECTIVE OF SENTENCING (THEN), BUT RATHER TO THE 18 USC 3553(A) FACTORS AS THEY EXIST NOW. HERE THE PETITIONER'S HEALTH AND THE UNIQUE DANGER HE FACES OF CONTRACTING COVID-19 IN THE BOP WHEN COMBINED WITH OTHER SECTION 3553 SENTENCING FACTORS WARRANT RELIEF.

Release from

The petitioner no more can stay with his children mother, she is a police officer, and have his own room after being gone for over 20 years, and can be with his family two daughters and three grand children. Verwan Clark can stay with his sister Yolanda Oliveri, who work for the city in the court system, she has a room for him, and could be there with his two nephews and they just lost their father how to be treated. There will be sexual abuse open for him, so it won't be a problem to find a job. He has military family that he can stay with, because he does have 200% family support



COURTS ARE INCREASINGLY HEEDING THE CALL LEGAL AND MEDICAL EXPERTS BY RELEASING VULNERABLE INMATES FROM BOP FACILITIES BY GRANTING COMPASSIONATE RELEASE DUE TO COVID-19 RISK. SEE E.G. UNITED STATES V. HARRIS NO. 4:05-CV-40025-CLJ DKT. 158, (DSD APR 6 2020. Reducing sentencing by 40 months under the FIRST STEP Act, given the extreme danger posed by COVID-19. UNITED STATES V. ZUCKERMAN, NO. 1:16-CV-194-KT, DKT NO. 116 (APR 3 2020) GRANTING IMMEDIATE COMPASSIONATE RELEASE, given COVID-19 to defendant convicted for multi-million-dollar fraud.) UNITED STATES V. EDWARDS NO. 6:17-CV-3-MKM DKT NO. 136 (APR. 2, 2020) GRANTING COMPASSIONATE RELEASE" had the COURT KNOWN when it sentenced DEFENDANT in 2018 that the ~~term~~ 18 months of his term in FEDERAL PRISON, would expose him to a heightened and substantial risk presented the COURT would NOT have sentenced him to the latter 18 months.) UNITED STATES V. RESNIK 2020 WL 1651568 (SDNY, APR 2, 2020.

### CONCLUSION

The novel coronavirus that causes COVID-19 has triggered a pandemic. The virus is highly transmissible, extraordinary dangerous, and poses a severe threat of death which constitutes "extraordinary and compelling reasons"

→ Thim Rth  
PO Box 1000  
Lewisburg, PA  
17837

Inmate Name: Kevin Allen  
Register Number: 45021054  
United States Penitentiary  
P.O. Box 1000  
Lewisburg, PA 17837



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MS

Honorable John L. Koeltl  
United States District Court  
Southern District of New York  
500 Pearl Street

New York New York 10007

10007-133099

